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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN,
CHAIRMANCARL KUNASEK,
COMMISSIONERTONY WEST,
COMMISSIONER

Arizona Corporation Commission

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IN THE MATTER OF US WEST)
 COMMUNICATIONS, INC.'S)
 COMPLIANCE WITH SECTION 271)
 OF THE TELECOMMUNICATIONS)
 ACT OF 1996)

Docket #T-00000B-97-0238

**OPPOSITION OF ACI CORP. TO US WEST COMMUNICATIONS, INC.'S
 MOTION TO COMPEL RESPONSES BY VARIOUS INTERVENORS
 TO US WEST'S FIRST SET OF DATA REQUESTS**

ACI Corp. ("ACI") submits the following Opposition to the Motion to Compel
 filed by US WEST Communications, Inc. ("US WEST").

STATEMENT OF FACTS

1. ACI is a telecommunications company that provides high speed data communications that combine local access through the deployment of DSL services, with capacity balanced local and wide area networks. ACI entered the commercial market in San Diego on April 1, 1998, after a two-month test period, and is currently rolling out services in California's Bay Area as well as Los Angeles and Orange County, and Chicago, Illinois, with plans to expand to thirty nationwide markets over the next three years. Moreover, ACI is already certified to provide telecommunications services in at

least some form in twenty-two states, including California, Oregon, Washington, Minnesota, Maryland, Colorado, Illinois, Massachusetts, New Jersey, Virginia, New York, Ohio, Pennsylvania, Connecticut, the District of Columbia, Florida, Georgia, Indiana, Kansas, Michigan, Texas and Wisconsin.

2. ACI filed an Application for a Certificate of Convenience and Necessity to authorize it to provide Intrastate Competitive Services in the state of Arizona (the "Application") with the Arizona Corporation Commission (the "Commission") on August 31, 1998, and was assigned Docket No. T-03621-98-0498. The Application is still pending before the Commission.

3. ACI filed a notice of interest in this proceeding on February 18, 1999.

4. On or about February 22, 1999, US WEST served 41 Data Requests upon ACI. By letter dated March 8, 1999, ACI informed US WEST that it would be able to respond to some of the Data Requests but would object to others. On March 12, ACI filed its Objections to ACI's Data Requests.

5. On or about March 15, 1999, US WEST filed its Motion to Compel Production of Responses ("USW Motion") with the Commission, and also served this USW Motion on ACI.

6. ACI, pursuant to Hearing Officer Rudibaugh's direction in his March 17, 1999 conference, met its obligation to meet and confer with US WEST on March 22, 1999, to see if it was possible to come to an agreement with respect to the outstanding discovery disputes.

7. No substantive agreement was reached, and ACI served US West with its Responses to those Data Requests to which ACI did not object on March 23, 1999.

8. For the convenience of the Commission, ACI first states the data request at issue, ACI's objection to the data request, and then the relevant argument that supports ACI's objection. ACI's objections are generally very specific and contain some of ACI's arguments that will not be repeated in the "argument" section.

RESPONSES TO DATA REQUESTS NOT CHALLENGED IN THE MOTION TO COMPEL

REQUESTS NOS. 1, 3-14

ACI responded to these data requests and US WEST's motion to compel does not discuss ACI's response or seek an order compelling ACI to respond to these data requests. See, US WEST's Supplemental Memorandum to Motion to Compel, at page 4, lines 14 through 23.

REQUEST NO. 16.

ACI responded to this data request and US WEST has not specifically challenged ACI's response in its motion to compel. See, US WEST's Supplemental Memorandum to Motion to Compel, at page 6, line 15 through page 8, line 19.

REQUEST NO. 21.

ACI responded to this data request and US WEST has not specifically challenged ACI's response in its motion to compel. See, US WEST's Supplemental Memorandum to Motion to Compel, at page 13, line 1 through page 14, line 2.

REQUEST NO. 40.

ACI responded to this data request and US WEST has not specifically challenged ACI's response in its motion to compel. See, US West's Supplemental Memorandum to Motion to Compel, at page 35, lines 9 through 23.

REQUEST NO. 41.

ACI responded to this data request and US WEST has not specifically challenged ACI's response in its motion to compel. See, US WEST's Supplemental Memorandum to Motion to Compel, at page 35, lines 25 through page 36, line 8.

**OBJECTIONS AND RESPONSES TO DATA REQUESTS
CHALLENGED IN THE MOTION TO COMPEL**

REQUEST NO. 2.

Please identify each US WEST central office or other location in Arizona where ACI collocates or intends to collocate within the next 24 months. For each projected located where ACI intends to collocate with US WEST within the next 24 months, state whether ACI intends to collocate physically or virtually, and produce all documents relating to these collocation plans. (Checklist Item No. 1)

Specific Objection: This Request is overly broad in its duration of twenty-four months. The state of competition today and in the immediate future is at issue in this proceeding, not two years in the future.

REQUEST NO. 15.

Please identify all entities other than US WEST, including ACI itself, from which ACI has obtained, or can obtain, for use in Arizona or in any of the other 13 states in US

WEST's region any of the following elements, items, or services: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) vertical features; (6) directory assistance; and (7) operator services. Produce all documents that relate to your ability to obtain such elements, items or services for use in Arizona or in any of the other 13 states in US West's region.

Specific Objections: This Request is irrelevant to this proceeding and is not likely to lead to the production of admissible evidence. ACI's experiences with other incumbent local carriers other than US WEST are not at issue in this proceeding.

Supplemental Objection: The sole issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist and whether it is in the public interest to allow US West to enter the interLATA market in Arizona, not whether ACI has obtained or can obtain certain elements from other entities. Only US WEST has the obligation under the Telecommunications Act of 1996 and this Commission's arbitration rulings to provide unbundled network elements to ACI. Further vendor information is proprietary. Disclosure of such information may violate a nondisclosure agreement on confidentiality provision of a vendor agreement.

The request asks ACI to provide information about all entities from which it can obtain network elements, but it is not clear whether US WEST means in the entire geographic area where US WEST provides services or beyond, whether it means at comparable rates, with equivalent functionality, and in a comparable period of time to those offered by US WEST. Finally, the order calls for speculation by asking ACI to identify entities from which it can obtain network elements. ACI does not know all entities from which it can obtain network elements in US WEST territory and, therefore, cannot provide all entities, only those that may be known to ACI.

Argument supporting ACI's position.

The issue is not whether ACI has obtained or can obtain certain elements from other entities in Arizona or any of the other 13 states. Only US West has the obligation under the Telecommunications Act of 1996 and this Commission's arbitration rulings to provide the relevant elements to ACI. Moreover, whether ACI can obtain any of these elements from another provider does not address whether ACI can obtain those elements throughout US WEST's serving area in Arizona where US WEST provides services or whether ACI can obtain those elements at comparable rates, with equivalent functionality, and in a comparable period of time to those required from US WEST. Assuming ACI could obtain the relevant elements in any or all of the other 13 states does not demonstrate that those elements would also be available from providers in Arizona.

Although, the BellSouth Louisiana Order I ¶ 54 (hereinafter referred to as "LA I ¶ ____") states that US WEST must demonstrate that it is ready to furnish the element in quantities that CLECs may reasonably demand and at an acceptable level of quality, until ACI specifically asserts in this proceeding that US WEST is unable to furnish any

element in quantities that CLECs may reasonably demand, such a request is premature at this phase of the proceeding. Presumably, US WEST has estimated demand since it asserts it already makes elements available to CLECs. US WEST should state its demand assumptions for each element in its complete filing. When and if CLECs challenge those assumptions, US WEST can seek through specific discovery the basis for such challenges from those CLECs challenging US WEST's demand assumptions.

US WEST also asserts that the demand information is also relevant under the "necessary" and "impair" criteria under the federal Act. In deciding whether CLECs need access to a network element, the Commission can and should consider whether the element is included in the competitive checklist in § 271(c)(2)(B) of the Act. Inclusion of an element in the competitive checklist is strong evidence that Congress believes it is critical for CLECs to have access to the element and that it is in fact important for US WEST to provide access on reasonable and nondiscriminatory terms. The § 271 checklist includes local loop transmission (item iv), transport (item v), switching (item vi), access to DA services and operator call completion services (item vii), and access to databases and associated signaling necessary for call routing and completion (item x). As the Supreme Court itself noted, the FCC has determined that access to operations support systems ("OSS") is essential to give CLECs effective access to these checklist items. *AT&T v. Iowa Utilities Board et al.*, 1999 WL 24568 at *10-11 (citing *Local Competition Order* ¶¶ 521-522); see LA II ¶ 83. ("The Commission consistently has found that nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC.").

The inclusion of these elements in the checklist reflects the fact that unless and until these core items are available on reasonable and nondiscriminatory terms to CLECs, local competition cannot develop. That these items are explicitly spelled out in § 271 and not in § 251 simply reflects Congress' conclusion that the checklist needs to be specific and concrete so that the Bell operating companies would know what they have to do to satisfy this requirement of § 271. Both §§ 251 and 271 share the same goal of opening up local markets as quickly as possible to broad-scale competition. Thus, the ability of carriers to offer local service on a reasonably level playing field in competition with US WEST would necessarily be impaired without access to each checklist item. The obligation to fully implement these requirements before ILEC long distance entry underscores the urgency as well as the importance of making each of these elements available to CLECs. Therefore, ACI contends that the "necessary" and "impair" standards relied upon by US WEST are irrelevant to § 271 checklist items and the elements for which US WEST seeks this information.

The relevant issue is whether US WEST is providing access to these elements on a nondiscriminatory basis, not whether ACI can obtain the relevant elements from some other provider that has no obligation to do so under the federal Act and from whom ACI might not be able to obtain those elements in a comparable manner, at comparable rates, with comparable functionality, throughout the US WEST serving area in Arizona.

REQUEST NO. 17.

For Arizona and the other 13 states in US West's region, please describe on a state-specific basis ACI's projected demand over the next 24 months for the following elements, items, and services that ACI expects to obtain from US West: (1) interconnection; (2) access to poles, ducts, conduits, and rights of way; (3) local loop transmission from the central office to the customer's premises, unbundled from local switching or other services; (4) local transport from the trunk side of the wireline local exchange carrier switch, unbundled from switching or other services; (5) local switching unbundled from transport, local loop transmission, or other services; (6) vertical features; (7) access to 911 and E911 services; (8) directory assistance services; (9) operator call completion services; (10) white pages directory listings; (10) access to databases and associated signaling necessary for call routing and call completion; (11) interim and/or long-term number portability; (12) reciprocal compensation arrangements; and (13) telecommunications services available for resale. Produce all documents that reflect, refer, or relate to ACI's projected demand for these elements, items, and services.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence. The state of competition today and in the immediate future is at issue in this proceeding, not two years in the future.

Supplemental Objection: The issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist and whether it is in the public interest to allow US WEST to enter the interLATA market in Arizona, not ACI's projected demand for certain elements from US WEST.

Argument supporting ACI's position

Notwithstanding ACI's objection, ACI cannot at present provide to US WEST forecasts and demand requirements.

Further as noted in ACI's argument addressing Data Request 15, requesting this information for the purposes stated by US WEST is premature until US WEST places its demand assumptions into the record of this proceeding.

REQUEST NO. 18.

Does ACI have a real-time operational support system that ACI's service representatives use to place customer service requests, local service requests or any other requests that ACI uses to order local telecommunications products or services? If so, for Arizona and the other 13 states in US West's region, provide the name of the system(s), the products and services the system(s) support(s), the date the system(s) was deployed,

and the data, functional message, and transport protocols used for the system(s). Produce all documents that refer to, reflect or relate to the products and services the system(s) supports, the date the systems(s) was deployed, and/or the data, functional message, and transport protocols used for the system(s).

Specific Objection: This Request is irrelevant to this proceeding and is not likely to lead to the production of admissible evidence. The Operational Support System ("OSS") capability employed by ACI is not at issue in this proceeding; US WEST's OSS is at issue.

Supplemental Objection: The issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist and whether it is in the public interest to allow US WEST to enter the interLATA market in Arizona, not how ACI designs, constructs, or operates its operational support systems ("OSS") in the US WEST states. ACI has no obligation to provide OSS under Section 251(c)(3) of the federal Telecommunications Act of 1996.

REQUEST NO. 19.

If ACI does not have an ordering system of the type described in the previous data request, please state all mechanisms, manual and otherwise, it uses to support the negotiation and ordering process for its local exchange customers, and state the functionality provided by each of the mechanisms. Produce all documents that describe, define, outline or otherwise explain these mechanisms, including but not limited to documents that describe or otherwise reflect the functionality that each mechanism provides.

Specific Objections: See Specific and Supplemental Objections to Request No. 18.

REQUEST NO. 20.

Does ACI follow any specific development, implementation, and testing guidelines when it develops OSS software for use in the local exchange market? If so, produce all documents containing the guidelines that ACI follows or, if the guidelines are not written, describe them.

Specific Objection: See Specific and Supplemental Objections to Request No. 18.

Argument supporting ACI's position on Data Requests 18, 19 and 20.

The FCC has determined that OSS is a network element and this determination has been affirmed by both the Eighth Circuit Court of Appeals and the U.S. Supreme Court in its January 25, 1999, decision. (*See, AT&T v. Iowa Utilities Board*, 1999 WL 24568.) The relevant standard in assessing any OSS interfaces is whether US WEST is providing access to its OSS that is equivalent to that enjoyed by US WEST

representatives for retail services for both unbundled network elements (“UNEs”) and for resale. BellSouth Louisiana II Order ¶¶ 80, 83 (hereinafter referred to as “LA II ¶ ____”). US WEST’s OSS must sufficiently support each competitive strategy, interconnection, UNEs, and resale and must not favor one strategy over another. BellSouth South Carolina Order ¶ 141, Ameritech Michigan Order ¶ 133, hereinafter referred to as “SC ¶ ____” and “MI ¶ ____” respectively). US WEST must demonstrate to the Commission that CLECs are able to use or develop a machine-to-machine interface that is substantially similar to what US WEST uses. Bell South Louisiana Order I, ¶ 55, hereinafter referred to as “LA I ¶ ____”).

Therefore, the three issues addressed by US WEST in these Data Requests, namely

- whether ACI has a real-time operational support systems that ACI's service representatives use to place customer service requests, local service requests or any other requests that ACI uses to order local telecommunications products or services,
- whether ACI has mechanisms, manual and otherwise, it uses to support the negotiation and ordering process for its local exchange customers, or
- whether ACI follows any specific development, implementation, and testing guidelines when it develops its OSS software for use in the local exchange market

do not address the relevant issue of whether US WEST is providing access to its OSS for ACI that is equivalent to that which is enjoyed by US WEST representatives for retail services for interconnection, unbundled network elements (“UNEs”) and resale.

US WEST argues that intervenors will assert that “US WEST’s EDI interface is not sufficient, despite the fact that not one of the Intervenor has built its side of the EDI interface.” Assuming for argument sake that no CLEC has not built its side of the EDI interface, does not preclude ACI from determining whether the EDI interface is sufficient through other means. Ironically, in the Arizona consolidated arbitration proceedings when justifying its reasons for building its human-to-computer (IMA) interface, US WEST acknowledges that CLECs do not have an obligation to build their own OSS. US WEST asserts that it developed its human-to computer (IMA) interface to provide CLECs who do not build their own interfaces access to US WEST’s OSS. (*See*, Arizona Docket Nos. U-3175-96-479, E-1051-96-479 *et al.* [Arizona OSS Costing Portion], Testimony of Dean Buhler which describes US WEST IMA as a human-to machine interface, Exhibit USWC OSS 4, at page 5, line 9 through line 11.)

If there is no commercial usage of US WEST’s EDI interface (which must be assumed from US WEST’s argument that no CLEC has built its side of the EDI interface), US WEST can demonstrate practical availability through carrier-to-carrier testing, third-party testing, or internal testing. SC ¶ 81. Moreover, US WEST can

demonstrate compliance with the FCC's standards of nondiscrimination and meaningful opportunity to compete by showing it has complied with proper performance standards. MI ¶ 204.

No CLEC has an obligation to build OSS interfaces under § Section 251(c)(3) of the federal Telecommunications Act of 1996 or any order of this Commission. US WEST has tried to make this a central issue to divert the Commission's attention from the real issue. US WEST argues that the absence of CLEC interfaces is a principal cause of any delay in entry by CLECs and implies that it need not provide access to its OSS that is equivalent to that enjoyed by US WEST representatives for retail services for both unbundled network elements ("UNEs") and resale if no CLEC has built its side of the interface. It provides no support for such an assertion, because no regulatory body has so required.

US WEST argues that the level and amount of testing that Intervenors such as ACI have used to develop their OSSs will serve as a good benchmark for how much testing is necessary for US WEST's OSSs, but provides no legal support for this proposition. On the other hand, as stated above, US WEST is permitted to provide carrier-to-carrier testing, third-party testing, or internal testing of its EDI interface to demonstrate the practical availability of its OSS. SC ¶ 81.

REQUEST NO. 22.

Identify each electronic interface ACI requires to provide local service in Arizona and the other 13 states in US West's region for the purpose of obtaining access to US West's pre-ordering, ordering, provisioning, billing, and maintenance and repair systems. For each interface that ACI identifies, please provide the following: (1) identify each interface that ACI believes is not available from US West; (2) if the interface is available and ACI contends it is inadequate, describe in detail each concern that ACI has about the adequacy of US West's interface; (3) the date ACI requires the interface to be made available from US West for testing by ACI; and (4) when ACI intends to begin using the interface to provide local exchange service in Arizona and the other 13 states in US West's region. Produce all documents that relate to any of the responses that ACI provides to this data request.

Specific Objection: This Request is irrelevant to this proceeding and is not likely to lead to the production of admissible evidence. The electronic interface and ordering system capability employed by ACI is not at issue in this proceeding; US WEST's electronic ordering and interface system is at issue.

Supplemental Objection: Once again the issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist, and whether it is in the public interest to allow US WEST to enter the interLATA market in Arizona, not when ACI intends to begin using the interface to provide local exchange service in Arizona and the other 13 states in US WEST's region. US WEST is obligated to make its OSS

available to CLECs under Section 251(c)(3) of the federal Telecommunications Act of 1996.

REQUEST NO. 23.

If ACI contends that other ILECs are meeting any of ACI's electronic interface needs relating to local exchange service, unbundled network element, or any other aspect of local service, identify the ILEC(s), describe the system(s) or interface(s) the ILEC(s) is using, and provide the name of a contact person at the ILEC(s) who is familiar with the system. Produce all documents that discuss, describe, or otherwise explain and/or discuss the capabilities of any such system(s) or interface(s).

Specific Objection: Relevance because it calls for information relating to other ILECs, not US WEST.

REQUEST NO. 24.

On average, how many electronic interface orders for some form of local exchange service has ACI placed with ILECs per day over the past year? Please provide a breakdown by state, ILEC, and order type of all electronic interface orders for local exchange service that ACI has placed with ILECS in the past year, including but not limited to documents containing breakdowns of this information by state, ILEC, and order type.

Specific Objection: This Request is irrelevant to this proceeding and is not likely to lead to the production of admissible evidence. Electronic interface orders placed by ACI with ILECs other than US WEST are not at issue in this proceeding.

REQUEST NO. 25:

Has ACI used any ILEC's graphical user interface ("GUI") or human-to-computer interface that supports local exchange service in any local telecommunications market in the United States within the past 24 months? If so, please identify each interface ACI has used, the ILEC who provides the interface, and the market in which ACI used the interface. If ACI has used a GUI or human-to-computer interface within the past 24 months, produce all documents that discuss, describe or otherwise explain the interface(s) it has used, the ILEC who provides the interface(s), and/or the market in which ACI used the interface(s).

Specific Objection: This Request is not relevant to the extent it calls for information relating to ILECs other than US WEST.

Argument supporting ACI's position on Data Requests 22, 23, 24 and 25.

The data which US WEST seeks does not have probative value, and is not reasonably calculated to lead to the discovery of data relevant to the US WEST filing. Assuming ACI has placed electronic interface orders for some form of local exchange service with other ILECs on a daily basis over the past year does not demonstrate whether US WEST is providing access to its OSS that is equivalent to that enjoyed by US WEST representatives for retail services for both unbundled network elements ("UNEs") and resale. LA II ¶¶ 80, 83. The electronic orders ACI has placed or may place with other ILECs is not a measure endorsed by the FCC to determine whether US WEST is providing access to its OSS that is equivalent to that enjoyed by US WEST representatives for retail services for both UNEs and resale.

Further as noted in MCIW's argument addressing Data Request 15, requesting demand and forecasting information for the purposes stated by US WEST is premature until US WEST places its demand assumptions into the record of this proceeding.

REQUEST NO. 26.

For each facilities-based, local telecommunications service that ACI provides in any of the states in US West's region, describe all provisioning commitments or representations that ACI gives to its customers, including but not limited to: (1) the average, anticipated time interval for installing the service; and (2) the average, anticipated amount of time the customer will be out of service to allow for a change of carriers through a loop cut-over. State whether the provisioning commitments or representations that ACI provides vary at all depending on whether ACI is using facilities provided by US West or facilities provided by some other source. Produce all documents that reflect, refer to, or relate to any provisioning commitments or representations that ACI provides to its customers for each such facilities-based, local telecommunications service that ACI provides in US West's region.

Specific Objection: This Request is unduly burdensome, seeks material that is confidential and proprietary business information and trade secrets, is irrelevant to this proceeding, and is not likely to lead to the production of admissible evidence. ACI's business plans and operations are not at issue in this proceeding.

REQUEST NO. 27.

Produce copies of all documents relating to presentations, marketing materials, sales efforts and related materials that ACI representatives use in their discussions with local exchange customers or in mass marketing of customers to promote or sell any local telecommunications service in US West's region, including, but not limited to, written scripts and other prepared presentations.

Specific Objection: See Specific Objection to Request No. 26.

REQUEST NO. 28.

Please state whether ACI measures or tracks in any way the time per call that its local service sales and marketing representatives spend on the telephone with customers to promote or sell ACI's local telecommunications services and to arrange for provisioning services. If ACI does measure or track the time for these calls, describe the nature of the information it records, and produce all documents that contain, refer, or relate to data of this type for all states in US West's region.

Specific Objection: See Specific Objections to Request No. 26.

REQUEST NO. 29.

Please state the hours of operation for ACI's local exchange units or offices in Arizona and in the other 13 states in US West's region, and produce documents that show the hours of operations for these units or offices.

Specific Objection: See Specific Objections to Request No. 26.

REQUEST NO. 30.

Please provide the following information for all states in US West's region for all local telecommunications services that ACI provides using only its own facilities: (1) the percentage of customer commitments met for provisioning and repairs; (2) the percentage of held orders; (3) the percentages of network blockage that ACI is experiencing, both in its network and outside of its network; and (4) the average repair intervals. Please provide the same information requested above for all states in US West's region for all local telecommunications services that ACI provides using any facilities provided by US West. Produce all documents that contain, refer, or relate to any such performance results for both instances where ACI uses US West's facilities and instances where it uses exclusively its own facilities for Arizona and the other 13 states in US West's region.

Specific Objection: This Request is not relevant to the extent it relates to ACI's use of its own facilities. This objection may not apply to the extent the Request calls for information relating to use of US West facilities.

REQUEST NO. 31.

Within US West's region, does ACI measure or track the frequency with which its local service sales and marketing representatives contact local exchange customers who have pending orders to notify them of the receipt of or change to: (1) order rejection notices; (2) firm order confirmation notices; (3) completion notices; and (4) jeopardy notices? If

ACI does measure or track this information, describe the nature of the information it records, and produce all documents that contain, refer, or relate to data of this type for all states in US West's region. In addition, please produce any documents that reflect ACI's policies and procedures data for informing its local exchange customers of receipt of or changes to the notices listed in this data request and/or summarizes, discusses or otherwise explains such performance data.

Specific Objection: See Specific Objections to Request No. 26.

REQUEST NO. 32.

On a sustained basis, without the use of temporary support from other groups within ACI, what is the absolute number of local service requests and orders that ACI is presently capable of issuing, by interface type, on a business day basis (*e.g.*, LSRs and orders per business day)? Please provide an attestation of the individual that is furnishing this information, and produce all documents that support, refer, or relate to the number of LSRs and orders that ACI is capable of issuing per business day.

Specific Objection: See Specific Objections to Request No. 26.

Argument supporting ACI's position for Data Requests 26 through 32

As noted several times earlier the proper standard is whether US WEST is providing interconnection services and access to its network elements in a nondiscriminatory manner that is equivalent to that enjoyed by US WEST representatives for retail services for both UNEs and resale. The provisioning commitments or representations that ACI gives to its customers for facilities-based services provided by ACI to its customers does not demonstrate that US WEST is providing interconnection services and access to its network elements in a nondiscriminatory manner that is equivalent to that enjoyed by US WEST representatives for retail services for both UNEs and resale.

US WEST argues that a comparison between US WEST's data and that of the Intervenor is relevant to providing the comparative data about performance measures the FCC seeks, citing LA II ¶ 77. US WEST contends that the data is relevant for it to conduct statistical analyses. Again, US WEST relies on the wrong standard. US WEST is required to provide services equivalent in quality to that it provides itself for retail operations and US WEST is precluded from providing itself or any CLEC discriminatory treatment. The standard measures US WEST provisioning (including pre-ordering, ordering, provisioning, maintenance, testing and repair and billing and collection) of services to CLECs. The reports then compare US WEST provisioning performance for CLECs to its own internal performance measures, and to the level of provisioning it provides among all CLECs to determine if a CLEC is advantaged or disadvantaged in relation to other CLECs or US WEST.

The FCC has stated that proper performance standards are necessary to demonstrate compliance with the FCC's standards of nondiscrimination and meaningful opportunity to compete. MI ¶ 204. State commissions are applauded for requiring performance standards, which the FCC will review in future applications. LA II ¶ 93. The Department of Justice ("DOJ") looks for ILEC performance standards (commitments made by the ILEC to meet specified levels of performance), which are preferably backed up by liquidated damages clauses. DOJ LA I Eval. at 31. To be most effective in preventing backsliding, such issues should be resolved in advance, either in contracts between the ILEC and its competitors or through regulatory proceedings. DOJ LA II Eval. at 39. However, evidence of compliance with performance standards in an interconnection agreement is sufficient only if those standards meet the nondiscrimination standards of the Act. MI ¶ 142. In addition to performance standards, detailed performance measurements, including disaggregated data and "precise clarity" in definitions, are necessary. MI ¶¶ 205-06, 209. Proper performance measurement is an "essential" part of effective support systems. DOJ LA I Eval. at 19-20, 31. Data gathering and computer systems are desirable, but must include important measurements such as actual installation intervals, or measurements relating to pre-ordering, billing timeliness, billing accuracy and billing completeness. DOJ SC Eval. at 46-48. Sufficient disaggregation is required to be able to usefully determine what the performance measures purport to measure. LA II ¶¶ 92, 111. A ILEC must explain any significant disparities in performance data on critical OSS functions, such as demonstrating statistically that the differences are the result of random variations in data. LA II ¶ 93.

ILECs are expected to provide performance data showing the average time from when the ILEC first receives a CLEC order to when the ILEC provisions service, and the equivalent information for the ILEC's retail operations. SC ¶ 137; LA II ¶ 124. This data should provide evidence of the ILEC performance for numerous carriers consistently over a specified period of time. LA I Order ¶ 36.

A competing carrier must receive information concerning the status of its customers' orders in substantially the same time and manner as the ILEC provides such information to itself for its retail operations. LA I ¶ 30. Such order status notices include order error and rejection, firm order confirmation, and order jeopardy notices. LA I ¶ 31; DOJ LA II Eval. at 31. The ILEC must provide data on timeliness of its delivery of such notices and the amount of time it takes to provide equivalent information to its retail operations. LA I ¶ 40.

Nowhere in all of these directives by the FCC or recommendations of the DOJ is there a hint that the information US WEST seeks here is to be evaluated for performance measures.

Moreover, in the consolidated arbitration proceedings in Arizona, Docket Nos. U-3175-96 479 and E-1051-96-478 *et al.*, specifically in the performance measure portion of that docket, no such information has been requested or required by this Commission to

establish appropriate performance standards or measures for purposes of the various CLEC/US WEST interconnection agreements.

Here, US WEST attempts to develop a new measurement, namely, that if the CLECs cannot possibly be disadvantaged by US WEST's failure to comply with relevant provisioning intervals, US WEST is not obliged to demonstrate that it is providing interconnection services and access to its network elements in a nondiscriminatory manner that is equivalent to that enjoyed by US WEST representatives for retail services for both UNEs and resale. ACI is not aware that this measurement has been endorsed by the FCC or this Commission, nor is such a measurement consistent with the federal Act § 251(c).

REQUEST NO. 33.

For Arizona and the other 13 states in US West's region, please provide: (1) the projected number of local service requests and orders per business day that ACI expects to place with US West, by interface type, over the next 24 months; and (2) the total projected demand from ACI for all pre-order transactions, by quarter, over the next 24 months. Produce all documents that reflect, support, or relate to these projections.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is also irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence. The state of competition today and in the immediate future is at issue in this proceeding, not two years in the future.

Supplemental Objection: The issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist and whether it is in the public interest to allow US WEST to enter the interLATA market in Arizona, not the projected number of local service requests and orders per business day that ACI expects to place with US WEST, by interface type, over the next 24 months; and (2) the total projected demand from ACI for all pre-order transactions, by quarter, over the next 24 months.

REQUEST NO. 34.

Does ACI intend to commit, in association with US West, to the development and/or availability of a production-ready OSS EDI for pre-ordering, ordering, and maintenance and repair for residential POTS and small business? If so, when? If not, why not? Produce all documents that discuss, refer, or relate to any consideration by ACI of whether to, and/or when to develop an OSS EDI interface in association with US West, including, but not limited to, documents relating to ACI's decision in the past to terminate or suspend this type of development with US West.

Specific Objection: Vague and ambiguous. This Request is not relevant to the extent it calls for ACI's operations and business plans. Such information is confidential and proprietary.

Supplemental Objection: The issue in this investigation is whether US WEST has complied with the Section 271 14-point checklist and whether it is in the public interest to allow U S WEST to enter the interLATA market in Arizona, not whether ACI intends to commit, in association with US WEST, to the development and/or availability of a production-ready OSS EDI for pre-ordering, ordering, and maintenance and repair for residential POTS and small business.

REQUEST NO. 35.

For each state in US WEST's region, please provide the number of orders for facilities-based services that ACI has submitted to any ILEC: (1) by any means, manual or otherwise, within the past year; and (2) through an electronic interface within the past year. Produce all documents that show the number of orders that ACI has placed through these means within the past year.

Specific Objection: This Request is irrelevant to this proceeding and is not likely to lead to the production of admissible evidence. Facilities-based service orders placed by ACI with ILECs other than US West are not at issue in this proceeding.

Supplemental Objection: The issue in this investigation is whether US WEST has complied with the Section 271, 14-point checklist and whether it is in the public interest to allow US WEST to enter the interLATA market in Arizona, not the number of orders for facilities-based services that MCI has submitted to any ILEC: (1) by any means, manual or otherwise, within the past year; and (2) through an electronic interface within the past year.

REQUEST NO. 36.

For Arizona and the other 13 states in US West's region, project the maximum number of ACI transactions US West will be required to process on average, per day for the functions of pre-ordering, ordering, billing, and maintenance and repair over the next 24 months. Describe in detail the basis for your response, and produce all documents that reflect or relate to these projected transactions.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is also irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence.

Argument supporting ACI's position for Data Requests 33 through 36

Please see ACI's arguments supporting its objections to Data Requests 15, 17, 18, 19 and 20. In summary, these requests are not calculated to lead to relevant information because the information, of produced, will not contribute to the Commission's assessment

of this filing under the relevant standard. Only US WEST has the obligation under the Telecommunications Act of 1996 and this Commission's arbitration rulings to provide adequate OSS interfaces and access to its back office systems that is equivalent to that it provides its representatives for retail operations.

Further as noted in ACI's argument addressing Data Request 15, requesting this information for the purposes stated by US WEST is premature until US WEST places its demand assumptions into the record of this proceeding.

REQUEST NO. 37.

Produce all documents concerning how (i.e.: through its own facilities, unbundled network elements, resale, or combination), where, and when (if at all) ACI currently plans to become a local exchange provider in Arizona. If ACI intends to become a facility-based provider in Arizona using unbundled network elements, identify the elements and the projected quantities you will need on a monthly basis from US West for each of the next 24 months, and produce all documents that reflect, refer, or relate to these projected needs needed for use in Arizona during this period.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is also irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence. The state of competition today and in the immediate future is at issue in this proceeding, not two years in the future.

REQUEST NO. 38.

Identify all towns, cities, and states in US West's region in which you anticipate initiating local service within: (A) 90 days; (B) 180 days; (C) 1 year; (D) 2 years; (E) 5 years. Produce all documents that discuss, refer, or relate to the identities of the towns, cities, and states in which you anticipate initiating local service within these time frames, including, but not limited to, all documents that reflect, refer, or relate to ACI's strategy for entering the local exchange markets in US West's region by targeting select markets. This request specifically includes, but is not limited to, documents that reflect separation of cities, states, or portions of states into tiers of importance.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is also irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence. The state of competition today and in the immediate future is at issue in this proceeding, not five years in the future.

REQUEST NO. 39.

Produce all documents created at any time from January 1, 1994, to the present that identify or discuss the states and cities where ACI has intended to serve as a local telecommunications provider, whether through resale or otherwise, including any and all documents that include rankings--by priority, importance, potential revenue or any other criteria--of states or cities for local market entry. This request includes, but is not limited to, any and all documents that reflect changes in the priority that ACI has given to states and cities for local market entry. This request specifically includes, but is not limited to, documents relating to ACI's plans for entering the local exchange markets in Connecticut or in any other state that discuss, refer, or relate to the entry of Southern New England Telephone Company ("SNET") and whether or not ACI's plans for entering Connecticut changed over time.

Specific Objection: This Request is overly broad as to the duration of the information sought, is unduly burdensome, is also irrelevant to the this proceeding and is not likely to lead to the production of admissible evidence. ACI's plans for service in the local exchange markets in the State of Connecticut are particularly irrelevant to this proceeding.

Argument supporting ACI's position for Data Requests 37 through 39

Please see ACI's arguments responding to Data Request 15 concerning US WEST's need for demand estimates and forecasts.

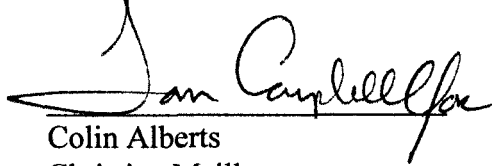
US WEST also suggests that this information is relevant to this Commission determining whether US WEST's entry into the interLATA market is in the public interest. The Telecommunications Act of 1996, §271(d)(2)(B) provides that the FCC must consult with the Arizona Corporation Commission as follows:

(B) Consultation with state commissions.--Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

That section demonstrates that the role of FCC is to consult with the relevant state commission to verify BOC compliance with Track A or Track B and the checklist requirements, and nothing else. LA I ¶ 7; DOJ SC Eval. at 14, 15. This Commission is not charged with assessing the public interest of allowing US WEST to enter the interLATA market.

DATED this 26th day of March, 1999.

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